

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company	)	
d/b/a Ameritech Illinois, and	)	
Ameritech Illinois Metro, Inc.	)	
	)	98-0555
Joint Application for approval of the	)	
reorganization of Illinois Bell Telephone	)	
Company d/b/a, Ameritech Illinois, and the	)	
reorganization of Ameritech Illinois Metro, Inc.	)	
in accordance with Section 7-204 of the Public	)	
Utilities Act and for all other appropriate relief.	)	

**BRIEF ON RE-OPENING OF NEXTLINK ILLINOIS, INC.**

NEXTLINK Illinois, Inc. ("NEXTLINK") hereby respectfully submits this Brief on Re-Opening and the attached Draft Hearing Examiners' Proposed Order (Attachment 1) in the above-captioned proceeding. NEXTLINK urges the Illinois Commerce Commission ("Commission") to reject the June 10, 1999 Amended Joint Application of SBC Communications Inc. and SBC Delaware Inc. ("SBC") and Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, and Ameritech Illinois Metro, Inc. ("Ameritech") for approval of the acquisition of Ameritech Corporation by SBC. In the alternative, in the event that the Commission nonetheless approves SBC's acquisition of Ameritech Corporation, the Commission should condition such approval as set forth herein pursuant to its authority under Section 7-204(f) of the Public Utilities Act ("Act") to impose such conditions as are necessary to protect the public utility Ameritech Illinois and its customers. (220 ILCS 5/7-204(f)).

## **I. BACKGROUND AND APPLICABLE LAW**

As stated in its Initial Brief dated February 23, 1999 (“NEXTLINK Initial Brief”) and its Reply Brief dated March 11, 1999 (“NEXTLINK Reply Brief”), NEXTLINK urged the Commission to reject the proposed acquisition because it fails to meet the criterion set forth in Section 7-204(b)(6) of the Illinois Public Utilities Act (“Act”) that it is not likely to produce a significant adverse effect on competition. (220 ILCS 5/7-204(b)(6)). NEXTLINK also urged the Commission to reject the proposed acquisition because it fails to meet the criterion of Section 7-204(b)(7) of the Act that it is not likely to result in any adverse rate impacts on retail customers. (220 ILCS 5/7-204(b)(7)).<sup>1</sup> NEXTLINK also took the position that if the Commission does approve the acquisition, it should use its broad Section 7-204(f) authority to impose conditions that are necessary to protect SBC/Ameritech’s competitors. (220 ILCS 5/7-204(f)).<sup>2</sup>

After considering the parties’ briefs as well as the Hearing Examiners’ Proposed Order (“HEPO”) and exceptions thereto, the Commission requested that the Joint Applicants move to re-open this proceeding and amend their application for approval because Chairman Mathias and Commissioners Kretschmer and Harvill were troubled by the record regarding the acquisition’s effect upon competition and sought clarification regarding the allocation of costs and savings

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<sup>1</sup> Commission Staff, the Citizens Utility Board (“CUB”), the Illinois Attorney General (“AG”) and the Cook County State’s Attorney (“State’s Attorney”) agreed with these positions. (Initial Brief of the Staff of the Illinois Commerce Commission (“Staff Initial Brief”) at 9; Initial Brief of the Citizens Utility Board (“CUB Initial Brief”) at 6; Initial Brief of the People of the State of Illinois (“AG Initial Brief”) at 5; and Initial Brief of the People of Cook County (“State’s Attorney Initial Brief”) at 8.)

<sup>2</sup> Commission Staff, CUB, the AG and the State’s Attorney, also support NEXTLINK’s position that if the Commission nonetheless approves the acquisition, it should use its broad authority under Section 7-204(f) of the Act to impose conditions that are necessary to protect competitors. (Staff Initial Brief at 72-74; CUB Initial Brief at 66-69; AG Initial Brief at 39-52; and State’s Attorney Initial Brief at 47-59).

from the acquisition and possible conditions to the merger. (June 4, 1999 letter from Chairman Mathias to the Joint Applicants). The Joint Applicants so moved and their Motion for Leave to File an Amended Joint Application and Motion to Reopen the Record was granted by the Commission. Evidentiary hearings were held in the re-opened phase of this proceeding on July 13-15, 1999 and the record was marked “heard and taken” on July 15, 1999.

In this Brief on Re-Opening, NEXTLINK again contends (a) that the Commission should reject the proposed acquisition because of its significant adverse effect on competition and its likelihood of adverse rate impacts on retail customers; and (b) that the Commission must impose conditions to protect competitors in the event the acquisition is approved. Therefore, NEXTLINK incorporates the NEXTLINK Initial Brief and the NEXTLINK Reply Brief herein. Additionally, in accordance with the July 9, 1999 letter from the Chairman to the Hearing Examiners, this Brief on Re-Opening and the attached Draft Hearing Examiners’ Proposed Order will address the amended portion of the Joint Applicant’s filing and propose specific conditions to be imposed by the Commission under Section 7-204(f) of the Public Utilities Act if the Commission approves the proposed acquisition. (220 ILCS 5/7-204(f)).

Specifically, NEXTLINK requests that the Commission require SBC/Ameritech to offer to CLECs in Illinois any unbundled network elements (“UNEs”), services, facilities and interconnection agreements (exclusive of the price) either offered by SBC or Ameritech as ILECs in their present incumbent service territories or obtained by a CLEC affiliate of SBC/Ameritech from an incumbent LEC, regardless of whether they were obtained through negotiation or ordered by arbitration. Additionally, the Commission should require that SBC/Ameritech provide all Operations Support Systems (“OSS”) performance measurements, standards/benchmarks and remedies that result from the Texas collaborative process regarding

performance measurements, within specific time periods prescribed by the Commission. Finally, the Commission should establish a compliance proceeding in which it ensures that SBC/Ameritech complies with all requirements in the final order in this proceeding and pursuant to which the Commission may levy penalties against SBC/Ameritech for its failure to comply with the final order.

## **II. THE JOINT APPLICANTS' COMMITMENTS ARE INSUFFICIENT TO PROTECT COMPETITORS AND CONSUMERS**

### **A. Joint Applicants' Interconnection Commitments are Insufficient**

In his Direct Testimony on Re-Opening, SBC witness Kahan states in the commitment labeled "Interconnection Commitment A" that SBC/Ameritech will commit to provide CLECs the UNEs, services, facilities and interconnection agreements/arrangements that SBC voluntarily offers as an ILEC in SBC's present incumbent service territories. (SBC/Ameritech Exhibit 1.3 at 6). Mr. Kahan, however, insists on exceptions to that commitment, stating, among other things, that SBC/Ameritech will not offer such arrangements which are imposed upon SBC by another state in arbitration and will not offer any interconnection arrangements which are not technically feasible. (SBC/Ameritech Exhibit 1.3 at 7). Further, Mr. Kahan asserts that SBC/Ameritech should not be subject to any penalties for its failure to honor this commitment because CLECs can avail themselves of arbitration if there are issues regarding compliance with this commitment that arise during interconnection negotiations. (Id. at 11 and 12).

SBC's exceptions to its commitment and failure to propose penalties render this commitment hollow. SBC's argument for not offering interconnection arrangements ordered by

another state in arbitration is that if SBC/Ameritech were required to offer such arrangements, “Illinois would in essence be abrogating its authority to other state commissions and would be waiving its rights to make its own legal and policy determinations.” (Id. at 13). This position is without merit because the requirement that SBC/Ameritech offer such out of state arbitration ordered arrangements would emanate from a Commission order and establish Illinois as a state where pro-competitive best practices would reign. (See, Covad Exhibit 1 at 12). Therefore, the Commission would not be abrogating its authority but rather would be exercising its authority to ensure that Illinois could take advantage of pro-competitive measures in other states.

Moreover, to the extent that the Commission wanted to preserve its authority to review each particular arrangement to insure that it did not violate Illinois law or policy, the Commission could adopt a procedure under which the Commission Staff could review each arrangement on these grounds and recommend rejection of the arrangements if there are state-specific reasons in Illinois which would make such arrangement technically infeasible or contrary to state law or policy. The key point is that SBC/Ameritech must be required to import both voluntary and arbitrated interconnection arrangements to Illinois for purposes of promoting a competitive market and should not be the party which decides whether such arrangements are offered to an Illinois CLEC. In fact, this condition is necessary to protect Ameritech Illinois’ customers because the proposed acquisition would lessen competition for local telecommunications services without such conditions and therefore should be imposed by this Commission as a condition to this acquisition pursuant to its Section 7-204(f) authority. (220 ILCS 5/7-204(f)). Furthermore, this requirement must apply not only to interconnection arrangements obtained by CLECs in SBC’s current incumbent service territory, but also to arrangements obtained by CLECs in Ameritech’s incumbent service territory other than Illinois

and arrangements obtained by a CLEC affiliate of SBC/Ameritech from any incumbent LEC. Whether the term or condition is in Texas or Michigan, competitors in Illinois should be able to take advantage of it.

If SBC/Ameritech is allowed to viscerate its commitment to import interconnection arrangements by eliminating arbitrated arrangements as proposed by its witness Mr. Kahan, SBC/Ameritech would be encouraged to arbitrate more issues in other states in an effort to exclude them from the required offerings in Illinois. (Covad Exhibit 1 at 6). By excluding arbitrated provisions from SBC/Ameritech's commitment, the Commission would provide a perverse incentive for SBC and Ameritech to resist negotiated agreements and arbitrate more terms and conditions than it otherwise would be inclined to do—forcing CLECs to allocate more resources and incur greater expense to obtain reasonable terms and conditions both inside and outside Illinois.

Perhaps most importantly, adoption of Mr. Kahan's truncated version of "pick and choose" would undermine the policy of extending industry "best practices" to the merged SBC/Ameritech. The loss of Ameritech and SBC as entities acting independently will reduce the potential for CLECs to develop and negotiate innovative solutions to interconnection arrangements and access to UNEs. The whole point of the "best practices" approach is that the new entity would adopt the best terms and conditions offered by SBC/Ameritech and make those terms and conditions available across the entire region.

In short, there simply is no reason other than discrimination and delay of competition for SBC/Ameritech to distinguish between negotiated and arbitrated provisions. While technical feasibility may indeed differ on a state by state basis, this could occur both in voluntary and arbitrated arrangements. Therefore, SBC/Ameritech must be required to prove such technical

infeasibility for either negotiated or arbitrated arrangements in a litigated proceeding before the Commission so that SBC/Ameritech does not repeatedly use this as an excuse. Furthermore, even if a particular interconnection arrangement is technically infeasible at a particular time, SBC/Ameritech must be required to take the necessary steps to make such arrangement technically feasible within a reasonable period of time and under Commission supervision.

Even if SBC/Ameritech is required to offer all arbitrated and negotiated agreements that are technically feasible in Illinois, however, this requirement will not truly be meaningful unless substantial penalties are assessed against SBC/Ameritech for failure to comply with this requirement. Otherwise, competitors would be forced to arbitration to achieve SBC/Ameritech compliance with this requirement which is hardly an improvement on what already exists today. To force competitors to arbitration for enforcement of requirements that should be complied with in the first place places competitors at a tremendous disadvantage and places unreasonable burdens on them. Therefore, as further discussed supra, the Commission should initiate an acquisition compliance proceeding for the purpose of, among other things, determining the appropriate penalties for any failure of SBC/Ameritech to offer the UNEs, services, facilities or interconnection agreements/arrangements required by the Commission's final order in this proceeding.

In addition, and in instances where SBC/Ameritech is operating as a CLEC, the Commission should require SBC/Ameritech to make available to any requesting CLEC any term or condition that it (or any of its affiliates) obtains from another local exchange carrier under an existing, or future interconnection agreement, arbitration decision or other state ruling. Such term or condition should be treated as if it were a term or condition subject to Section 252(i) obligations, should be made available within twenty (20) calendar days of the request, and

thereafter subject to regulatory approvals, as necessary, pursuant to Sections 251 and 252 of the Act.

**B. SBC/Ameritech's OSS Performance Measurements, Benchmarks and Liquidated Damages are Insufficient**

SBC/Ameritech offers Operations Support Systems ("OSS") performance measurements, standards and liquidated damages that fall short of real commitments to the Commission and for competition in Illinois. (SBC/Ameritech Exhibit 10.0). It is noteworthy that SBC and Ameritech at least concede the importance of their performance as critical to the success of competition. But rather than commit to implement the 122 OSS performance measurements, standards and associated liquidated damages that have been adopted as a result of a lengthy collaborative process in Texas, SBC/Ameritech has committed only to implement those measures which an SBC/Ameritech Task Force determines are technically or economically feasible to implement in Illinois without input from CLECs or the Commission. (SBC Exhibit 10.0).

Although SBC/Ameritech has committed to implement 79 of the measures regardless of the SBC/Ameritech Task Force's determinations, SBC/Ameritech has not identified which of the 79 measures it will implement. (Transcript at 2334). NEXTLINK urges the Commission to reject the process proposed by SBC/Ameritech and require SBC/Ameritech to implement the 122 OSS performance measurements, standards and liquidated damages that have been adopted as a result of the Texas collaborative process unless SBC/Ameritech can prove to the Commission that a particular measurement and standard is technically infeasible in Illinois.



Clearly, the process proposed by SBC/Ameritech for adoption of performance measurements and benchmarks/standards is seriously flawed. It should not be solely up to SBC/Ameritech to determine the feasibility of the performance measures and standards/benchmarks that could be implemented.

Although SBC/Ameritech has proposed a “collaborative process” with Commission Staff and CLECs to determine the initial performance measurements, standards/benchmarks, and remedies to be implemented in Illinois within 210 days of the closing of the acquisition (SBC/Ameritech Exhibit 10.0 at 4 – 5), what is the likelihood that SBC/Ameritech will agree to implement a measure during the collaborative process that SBC/Ameritech’s own Task Force previously determined was infeasible? It is obvious that any so-called collaborative process will be of limited value if SBC/Ameritech takes it upon itself to determine what OSS performance measurements and standards/benchmarks will be part of the collaboration. This permits SBC/Ameritech to embark on a systematic carve-out of commitments made in Texas and renders the 210 day time period meaningless. Moreover, while technical feasibility is a commonly used term in the industry which is used in the Telecommunications Act and defined in the FCC Rules, SBC/Ameritech has invented the concept of economic feasibility out of whole cloth. Indeed, SBC witness Dysart testified that “I really can’t tell you if its commonly used in telecommunications.” (Transcript at 2328). Economic feasibility should therefore be rejected out of hand by the Commission. SBC/Ameritech attempts to provide some semblance of substance to its so-called commitments by stating that at least 79 of the 122 Texas OSS performance measurements, standards/benchmarks and remedies will be implemented within 300 days of the closing date of the acquisition. (*Id.* at 7). However, as discussed supra, SBC/Ameritech does not commit to which 79 of the Texas performance measurements,

standards/benchmarks and remedies will be implemented within the prescribed 300 day period. (Transcript at 2334). This is not surprising considering the testimony of SBC's witness Dysart that SBC concocted this commitment during a one and one-half hour conference call with Ameritech. (Transcript at 2336). Perhaps most significantly, SBC/Ameritech makes no commitment and provides no penalties as to when and if the remaining 43 performance measurements, standards and associated remedies would be implemented, creating an open-ended time period permitting constant delay. Clearly, these so-called commitments touted by SBC/Ameritech are insufficient gestures made for the purpose of obtaining Commission approval for this acquisition and little else.

The Commission should call SBC/Ameritech's bluff on performance measurements and impose strong, enforceable conditions on performance measurements and standards as a condition of the proposed acquisition. This condition clearly is necessary to protect Ameritech Illinois' customers and therefore should be imposed pursuant to the Commission's 7-204(f) authority. (220 ILCS 5/7-204(f)). Specifically, the Commission should require SBC/Ameritech to implement in Illinois each and every Texas performance measurement and standard, or a reasonable alternative if not technically feasible, within 345 days of merger closing or face penalties. Instead of a "collaborative process" in Illinois, SBC/Ameritech's implementation of these performance measurements, standards/benchmarks and remedies should be reviewed as a part of the compliance proceeding further discussed infra in which the Commission can develop a full record regarding technical feasibility if necessary and enforce the liquidated damages remedies to which SBC/Ameritech has committed if a Texas performance measure and standard is adopted (Transcript at 2337), as well as additional remedies if necessary.

In the event the Commission agrees with SBC/Ameritech in this compliance proceeding that a particular performance measure or standard is not technically feasible, SBC/Ameritech should be required to make such OSS and facilities performance measure and standard technically feasible within a Commission prescribed period of time or pay penalties as determined by the Commission unless SBC/Ameritech has implemented a reasonable alternative which has been approved by the Commission.

In addition, the Commission should take note that SBC/Ameritech's proposed conditions do not provide for independent, third-party testing of their OSS systems. Procedures developed by the New York Public Service Commission ("NY PSC") in Case No 97-C-0271 can serve as a vehicle to evaluate SBC/Ameritech's OSS and can be used as a basis for the Commission's evaluation of SBC/Ameritech's OSS. The process in New York, although not perfect, has been an extremely productive mechanism to identify flaws and problems with Bell Atlantic OSS systems and provide incentives to Bell Atlantic to improve its systems.

#### **IV. THE COMMISSION SHOULD ESTABLISH A POST-ACQUISITION COMPLIANCE PROCEEDING**

In order to ensure ongoing compliance with the requirements on SBC/Ameritech that result from this proceeding, the Commission should institute a compliance proceeding for a period of 5 years to monitor and enforce compliance by SBC/Ameritech with the requirements of the Commission's final order. The Commission should also use this compliance proceeding to determine issues such as technical feasibility and to develop a more complete record regarding the requirements placed on SBC/Ameritech so that implementation timeframes and associated penalties can be determined with more certainty.

This proceeding will be essential not only for enforcement of OSS performance measurements, standards/benchmarks and remedies, but also because the only mechanism SBC/Ameritech offers for CLECs who request UNEs, services, facilities, and interconnection agreements/arrangements from SBC/Ameritech is arbitration, which is already provided under the Telecommunications Act of 1996. Absent a compliance proceeding, CLECs will be forced to arbitrate each and every failure of SBC/Ameritech to live up to a commitment. In sum, a compliance proceeding is clearly essential for the efficient enforcement of the order of the Commission in this proceeding and will help facilitate the development of a competitive local telecommunications exchange market in Illinois.

## **V. CONCLUSION**

WHEREFORE, NEXTLINK respectfully requests that the Commission reject the proposed acquisition, but in the event the Commission approves the acquisition, NEXTLINK respectfully requests that the Commission impose the pre-approval and post-approval conditions set forth in the attached Draft Hearing Examiners' Proposed Order and its Initial Brief and Reply Brief.

Respectfully submitted,

**NEXTLINK Illinois, Inc.**

By: \_\_\_\_\_

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Dated: July 27, 1999

**ATTACHMENT 1**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>SBC COMMUNICATIONS INC.,</b>	)	
<b>SBC DELAWARE INC.,</b>	)	
<b>AMERITECH CORPORATION,</b>	)	
<b>ILLINOIS BELL TELEPHONE COMPANY</b>	)	
<b>d/b/a AMERITECH ILLINOIS and</b>	)	
<b>AMERITECH ILLINOIS METRO, INC.</b>	)	
	)	
	)	<b>98-0555</b>
<b>Joint Application for approval of the</b>	)	
<b>reorganization of Illinois Bell Telephone</b>	)	
<b>Company d/b/a Ameritech Illinois,</b>	)	
<b>and the reorganization of Ameritech</b>	)	
<b>Illinois Metro, Inc. in accordance</b>	)	
<b>with Section 7-204 of The Public Utilities</b>	)	
<b>Act and for all other appropriate relief.</b>	)	

**DRAFT HEARING EXAMINERS' PROPOSED ORDER**

By The Commission:

**I. Introduction and Procedural History**

On July 24, 1998, SBC Communications Inc. ("SBC"), SBC Delaware Inc., Ameritech Corporation ("Ameritech"), Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois," "AI," or "Company"), and Ameritech Illinois Metro, Inc. ("AIM") (collectively "Joint Applicants") filed a verified Joint Application seeking this Commission's approval, under Section 7-204 of the Illinois Public Utilities Act ("PUA" or the "Act") of the "reorganization" of Ameritech Illinois and AIM resulting from a proposed business combination of SBC and Ameritech.

SBC is a Delaware corporation with its corporate headquarters located in San Antonio, Texas. SBC is a holding company whose subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and Southern New

England Telephone Company ("SNET"), each of which is an incumbent local exchange carrier ("ILEC"). SBC also has subsidiaries and affiliates that provide wireless telecommunications and related services, including in Illinois under the "Cellular One" brand name. In addition, SBC has investments in telecommunications companies that serve selected markets outside of the United States. SBC's consolidated 1997 adjusted revenues were approximately \$25 billion with a net income of \$1.5 billion.

Ameritech Corporation is a Delaware corporation with its corporate headquarters located in Chicago, Illinois. Ameritech is a holding company whose subsidiaries include Ameritech Illinois. Ameritech's other subsidiaries and affiliates include ILECs in four other states, wireless telecommunications and related services providers in Illinois and several other states, and a provider of security monitoring services in most of the United States' largest metropolitan areas. Ameritech also has significant investments in the European telecommunications industry. Ameritech's consolidated 1997 adjusted revenues were approximately \$16 billion with a net income of \$2.3 billion.

Ameritech Illinois is an Illinois corporation with its headquarters located in Chicago, Illinois. Ameritech Illinois is a certificated local exchange and intraMSA interexchange carrier and currently serves approximately 240 exchanges and approximately 6.6 million access lines throughout Illinois. Ameritech Illinois is both a Bell operating company ("BOC") and an ILEC as those terms are defined in the federal Telecommunications Act of 1996 ("96 Act", "Act", or "TA96").

AIM was a wholly-owned subsidiary of AI at the time that the Joint Application was filed. Subsequent to the filing of the Joint Application, AIM merged with and into AI after obtaining this Commission's approval to do so.

SBC Delaware Inc. is a Delaware corporation and a wholly-owned subsidiary of SBC. SBC Delaware was created solely for the purpose of effectuating an exchange of stock between SBC and Ameritech's shareholders as part of the proposed business combination transaction described below. Upon completion of that transaction, SBC Delaware would cease to exist.

The reorganization of Ameritech Illinois that is the subject of the Joint Application would result from a proposed business combination of SBC and Ameritech ("reorganization" or "merger"). The combination would be accomplished through an exchange of stock between Ameritech's shareholders and SBC, via SBC Delaware. Upon completion of the exchange of stock, SBC Delaware would be merged with and into Ameritech, and Ameritech would become a wholly-owned, first-tier subsidiary of SBC. AI would remain a wholly-owned subsidiary of Ameritech. Because this proposed transaction constitutes a "reorganization" of AI under Section 7-204, Joint Applicants request this Commission's approval of the transaction in accordance with that Section.

Pursuant to notice, prehearing conferences were held before duly-authorized Hearing Examiners of the Commission at its Chicago offices on August 18, October 29, November 24, and December 7, 1998. The following parties petitioned for and were

granted leave to intervene by the Hearing Examiners: Covad Communications Company ("Covad"), Sprint Communications Company, L.P. d/b/a Sprint Communications ("Sprint"), AT&T Communications of Illinois, Inc. ("AT&T"), MCI Worldcom, Inc. ("MCI"), DSSA and Neighborhood Learning Networks ("DSSA"), the Citizens Utility Board ("CUB"), the People of the State of Illinois ("AG"), the People of Cook County ("Cook County" and together with CUB and AG, "GCI"), the City of Chicago ("Chicago"), the American Association of Retired People ("AARP"), the Cable Television and Communications Association of Illinois ("CTCA"), 21st Century Telecom of Illinois, Inc. ("21st Century"), NEXTLINK Illinois, Inc. ("NEXTLINK"), MGC Communications, Inc. ("MGC"), Corecomm, Ltd. ("Corecomm"), the Illinois Public Telecommunications Association ("IPTA"), and the Telecommunications Resellers Association ("TRA"). The Illinois Commerce Commission Staff ("Staff") also appeared by counsel and actively participated in the docket.

Additional petitions for leave to intervene which were granted by the Hearing Examiners were, as follows: the Community Workshop on Economic Development, Sutherland Community Arts Initiative, and the Veterans Neighborhood Builders Association, Inc.

Evidentiary hearings were held on January 25-29, 1999. The following witnesses testified at the hearings: on behalf of Joint Applicants, James S. Kahan, SBC's Senior Vice President for Corporate Development; Karen E. Jennings, SBC's Senior Vice President for Human Resources; Charles H. Smith, President of Pacific Bell Network Services; Christopher J. Viveros, Pacific Bell's Director-OSS Planning and Regulatory Support; W. Patrick Campbell, Ameritech's Executive Vice President of Corporate Strategy and Development; David H. Gebhardt, Ameritech Illinois' Vice President - Regulatory Affairs; Richard R. Galloway, Ameritech's Director of Network Process Management and Service Results; and two outside economists, Dr. Robert G. Harris and Dr. Richard J. Gilbert.

Staff witnesses were Judith R. Marshall, Rasha Toppozada-Yow, Robert Plaza, Deborah Prather, Cindy Jackson, S. Rick Gasparin, Samuel S. McClerren, Christopher L. Graves, and an outside economist, Dr. Carl E. Hunt. GCI witnesses were Dr. Lee L. Selwyn and Charlotte F. TerKeurst. AARP's witness was an economist, Dr. Mark N. Cooper. AT&T witnesses were Sarah DeYoung, Bruce Bennett, Kathleen S. Whiteaker, and an outside economist, Joseph Gillan. Sprint witnesses were David E. Stahly and Paul A. Wescott, and an outside economist, Dr. John R. Woodbury. MCI's witness was David N. Porter. NEXTLINK's witness was Daniel Gonzalez. DSSA's witness was Don S. Samuelson. IPTA's witness was Martin S. Segal. At the close of the hearing on January 29, 1999, the record was marked "Heard and Taken."

Subsequently, upon AT&T's motion, the Hearing Examiners admitted into the record as late-filed exhibits the direct testimony (and exhibits) and cross-examination transcript (and exhibits) of one of SBC's witnesses, Mr. Kahan, from the merger proceedings, conducted by the Public Utilities Commission of Ohio.



Initial Briefs were filed by Joint Applicants, Staff, CUB, AG, Cook County, AT&T, Sprint, MCI, NEXTLINK, 21st Century, CTCA, TRA and DSSA. Reply briefs and/or draft orders were filed by Joint Applicants, Staff, CUB, AG, Cook County, AT&T, Sprint, MCI, NEXTLINK, 21st Century, CTCA, AARP and DSSA. Motions for oral argument were filed by Joint Applicants and AT&T.

On March 29, 1999, the Hearing Examiners issued their Hearing Examiners' Proposed Order ("Proposed Order"). Exceptions or Replies to Exceptions were filed by Joint Applicants, Staff, CUB, AG, Cook County, AT&T, Sprint, MCI, NEXTLINK, 21<sup>st</sup> Century, CTCA, TRA, and DSSA.

All of the exceptions were carefully considered and resulted in substantive changes in our Order to both the positions of the parties, as well as the Commission's conclusions. A Post Exceptions Proposed Order was provided on April 26, 1999 to the parties.

The Commission, On Its Own Motion, sitting en banc, heard oral argument on April 29 and 30, May 3 and 4, 1999.

Pursuant to a request from the Chairman in a letter dated June 4, 1999, the Joint Applicants moved to re-open this proceeding and filed an amended application on June \_\_. Several parties, including SBC, Ameritech and Staff submitted testimony and evidentiary hearings on re-opening were held on July 13, 14 and 15. Briefs on re-opening were filed by NEXTLINK, \_\_\_\_\_ and on July \_\_ the Hearing Examiners issued their proposed order. The Commission then took the matter under advisement.

## **II. Disputed Issues**

### **A. Whether the Joint Applicants Should Be Required to Offer Terms and Conditions for UNEs, Services, Facilities, and Interconnection Agreements/Arrangements That SBC Offers As An ILEC In SBC's Present Incumbent Territory**

#### Joint Applicants' Position

Joint Applicants contend that they will offer in Illinois UNEs, services, facilities and interconnection agreements/arrangements that SBC voluntarily offers in its present incumbent service territories. Joint Applicants maintain that compelling them to offer such terms and conditions from another state that are as a result of arbitration would effectively abrogate the Commission's authority to other state commissions. Joint Applicants also maintain that they should not be compelled to offer any such terms and conditions of interconnection arrangements in Illinois if the term or condition is not technically feasible in Illinois. Joint Applicants maintain that they should not be subject to any penalties for their failure to comply with its commitment.

### Intervenors' Positions

NEXTLINK believes that the Joint Applicants should be compelled to offer all UNEs, services, facilities and interconnection agreements/arrangements terms and conditions whether they are offered voluntarily by Joint Applicants or as a result of arbitration. NEXTLINK disputes that the Commission would be abrogating its authority, and in fact believes that the Commission would be asserting its authority to ensure that best practices are brought to Illinois. NEXTLINK is also concerned that limiting this condition only to voluntarily agreed to terms would provide Joint Applicants incentive to arbitrate all terms and conditions to preclude them from being offered in Illinois. NEXTLINK also believes that this condition should apply to the entire SBC/Ameritech region and not just to SBC's current incumbent service territories. Moreover, it is NEXTLINK's position that this condition also should apply to terms and conditions obtained by a CLEC affiliate of SBC/Ameritech from an incumbent CLEC. In the event a term or condition is found not to be technically feasible, NEXTLINK maintains that Joint Applicants must, pursuant to a Commission compliance proceeding, take the necessary steps to make such term or condition technically feasible in Illinois unless the Commission approves a reasonable alternative. NEXTLINK also maintains that penalties should apply if the Joint Applicants fail to fulfill their commitments.

### Commission Analysis and Conclusion

The Commission finds that Joint Applicants must offer in Illinois each and every UNE, service, facility and interconnection agreement/arrangement that Joint Applicants offer either voluntarily or as a result of arbitration in every state that is in either SBC's or Ameritech's incumbent service territory. Moreover, Joint Applicants must offer in Illinois each and every UNE, service, facility and interconnection agreement/arrangement that is obtained by a CLEC affiliate of SBC/Ameritech from an incumbent LEC. It is the desire of this Commission that Illinois take advantage of every best practice that either exists or develops in any Joint Applicant incumbent service territory so that competition in Illinois may develop along the nation's best practices, rather than forcing competitors to fight tooth and nail for such best practices.

We reject Joint Applicants' assertion that requiring terms and conditions that result from another state's arbitration order is in some way abrogating this Commission's authority. This Commission is willingly requiring that arbitrated terms and conditions be brought to Illinois pursuant to this Commission Order. These are not terms foisted on Illinois over this Commission's objection, but rather are a product of the extension of this Commission's authority and desire to foster an open and competitive local market. Therefore, Joint Applicants shall be required to offer in Illinois each and every UNE, service, facility and interconnection agreement/arrangement that Joint Applicants offer either voluntarily or as a result of arbitration in every state in that is in either SBC's and Ameritech's incumbent service territory. Additionally, Joint Applicants shall be required to offer in Illinois each and every UNE, service, facility and interconnection agreement/arrangement obtained by a CLEC affiliate of SBC/Ameritech from an incumbent LEC.

Joint Applicants also state that they should not be required to offer a term or condition in Illinois if that term or condition is not technically feasible in Illinois. Technical feasibility is a generally accepted standard and this Commission recognizes that just because a term or condition is technically feasible in another state it may not be in Illinois. This Commission, however, does not want the standard of technical feasibility to serve as a roadblock to competition in Illinois. Therefore, if as a result of the compliance proceeding provided for further in this Order, Joint Applicants demonstrate that a term or condition is not technically feasible, then Joint Applicants will be required to take whatever steps are necessary to make such term or condition technically feasible within timeframes proscribed by the Commission unless the Commission approves a reasonable alternative. Anything less would permit Joint Applicants to refrain from offering a term or condition in Illinois that is offered in another state, thereby disadvantaging competition in Illinois and defeating this Commission goal of making Illinois a haven of best practices. Further, this Commission does not want to provide Joint Applicants an easy excuse for not offering a term or condition in Illinois that is offered in another state or states.

Finally, and as a part of the compliance proceeding, Joint Applicants will be subject to penalties as determined by this Commission in such proceeding for the failure to fulfill these requirements. To force competitors to arbitration to enforce requirements ordered by this Commission is burdensome and unfair to competitors. This Commission will use the compliance proceeding to develop a record that will determine the extent and amount of penalties to which Joint Applicants will be subject.

## **B. Whether the Joint Applicants' Proposed OSS Performance Measurements, Standards and Liquidated Damages are Sufficient**

### Joint Applicants Position

Joint Applicants are offering to bring to Illinois something akin to the OSS performance measurements, benchmarks and liquidated damages that have resulted from a collaborative process in the state of Texas. Joint Applicants will convene a task force made up of SBC/Ameritech personnel that will determine which standard will be brought to Illinois and then present them in Illinois as a part of a collaborative process. Joint Applicants commit to adopt 79 of the 122 OSS performance measurements/standards adopted in Texas within 300 days of merger closing. Joint Applicants propose adoption of liquidated damages for their failure to implement standards which are adopted in Illinois.

### Intervenors' Positions

NEXTLINK maintains that the Joint Applicants' commitments are insufficient and very vague. NEXTLINK states that it is unclear which of the standards will be offered in the initial 79 of the 122 that are proposed by SBC/Ameritech.

NEXTLINK maintains that the Commission should require SBC/Ameritech to implement in Illinois each and every Texas performance measurement, standard/benchmark and remedy, or a reasonable alternative if not technically feasible, within a date certain or face substantial financial penalties. Instead of a “collaborative process” in Illinois, NEXTLINK submits that SBC/Ameritech’s implementation of these performance measurements, standards/benchmarks and remedies should be reviewed as a part of a compliance proceeding in which the Commission can develop a full record regarding technical feasibility if necessary and enforce the liquidated damages remedies to which SBC/Ameritech has committed if a Texas performance measurement and benchmark is adopted, as well as additional remedies if necessary.

NEXTLINK also maintains that SBC/Ameritech has made no commitment regarding what is to happen if an OSS performance measure, standard or benchmark is not technically feasible in Illinois, and states that it is not acceptable that once the determination of technical infeasibility is made, that the OSS and facilities performance measure is then not implemented. Rather, and as a part of its recommended Commission compliance proceeding, in the event the Commission determines that a performance measure or standard/benchmark is not technically feasible, NEXTLINK states that SBC/Ameritech should be required to make such OSS and facilities performance measure technically feasible within a Commission prescribed period of time or pay Commission prescribed penalties unless SBC/Ameritech has implemented a reasonable alternative which has been approved by the Commission. NEXTLINK further states that the Commission should require independent, third party testing of the SBC/Ameritech OSS system.

#### Commission Analysis and Conclusion

This Commission believes that OSS performance measurements, benchmarks and liquidated damages are essential elements to its approval of this merger. These standards are critical to the development of an open local exchange market in Illinois that this Commission intends to foster.

Joint Applicants, however, have presented us with a series of vague commitments that have been proposed in an uncertain manner. Therefore, this Commission is committed to bring clarity to these issues.

Joint Applicants have offered to implement a total of 122 OSS performance measurements, standards/benchmarks and remedies in Illinois unless they are technically infeasible. To ensure that this comes to pass, we hereby order that the 122 OSS performance measurements, standards/benchmarks and remedies resulting from the Texas collaborative process, or a reasonable alternative if technically infeasible, shall be implemented in Illinois within 345 days from the closing date of the merger.

In their proposals, Joint Applicants have recognized the need for penalties for Joint Applicants’ failure to provide the OSS performance measurements,

standards/benchmarks and remedies within certain periods of time. Therefore, we determine that consistent with their proposal, in the event Joint Applicants fail to implement the 122 OSS performance measurements, standards/benchmarks and remedies within 345 days, Joint Applicants shall pay to CLECs and to a newly established Community Technology fund a fine in an amount to be determined by this Commission, but in no event shall such fine amount be less than \$30 million.

While Joint Applicants seek to make these standards a product of a collaborative process, the Commission is concerned regarding the inherent informal nature of that proceeding. Therefore, and consistent with the foregoing, we hereby order that the review of the implementation of these OSS performance measurements, standards/benchmarks and remedies shall be part of the compliance proceeding to be conducted by this Commission and under which the Commission shall levy appropriate penalties for Joint Applicants' failure to comply unless the Commission finds that the measure is technically infeasible and SBC/Ameritech has implemented a reasonable alternative which is approved by the Commission. The penalties shall include but not be limited to the liquidated damages to which Joint Applicants have committed when Texas performance measurements and standards are adopted. This Commission shall initiate such compliance proceeding on its own authority immediately following the merger closing date. In addition, and in order to identify flaws in the OSS system and assist in remedying such flaws, we also order that the SBC/Ameritech OSS system shall be subject to independent, third party testing, such testing to be conducted under the compliance proceeding to be ordered by this Commission.

**C. The Commission Will Initiate A Compliance Proceeding To Monitor Joint Applicants' Compliance With The Requirements of This Order and Under Which The Commission May Levy Appropriate Penalties**

Upon issuance of this Order, the Commission shall initiate a proceeding for the purpose of ensuring Joint Applicants' compliance with the requirements of this Order and to develop a record upon which to base and levy penalties upon the Joint Applicants for non-compliance with the interconnection and OSS performance measurements, standards/benchmarks and remedies set forth in this Order. Such proceeding shall have a duration of 5 years, subject to the annual determination of this Commission as to whether to continue such proceeding. If this Commission so determines, it may extend the compliance proceeding beyond such 5 year period.

**III. Findings and Ordering Paragraphs**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company d/b/a Ameritech Illinois is a telecommunications carrier certified to provide local exchange and intraMSA interexchange services in Illinois; Ameritech Illinois does provide

such services and provides both competitive and noncompetitive telecommunications services;

- (2) Joint Applicants request approval of a “reorganization” of Ameritech Illinois that would result from a business combination of SBC Communications Inc. and Ameritech Corporation, two Delaware corporations and holding companies; if that business combination is completed, Ameritech Corporation would become a wholly-owned first-tier subsidiary of SBC Communications Inc. and Ameritech Illinois would remain a wholly-owned subsidiary of Ameritech Corporation;
- (3) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (4) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (5) Joint Applicants shall offer in Illinois each and every UNE, service, facility and interconnection agreement/arrangement that Joint Applicants offer either voluntarily or as a result of arbitration in every state that is in either SBC’s and Ameritech’s incumbent service territory;
- (6) Joint Applicants’ offering of such each and every UNE, service, facility and interconnection agreement/arrangement shall be subject to the resulting compliance proceeding and in the event Joint Applicants fail to offer each every UNE, service, facility and interconnection/arrangement, Joint Applicants shall be subject to fines as determined by this Commission;
- (7) Joint Applicants shall implement the 122 Texas OSS performance measurements, standards/benchmarks and remedies within 345 days of the closing date of the merger, unless a measurement or standard/benchmark is not technically feasible in which case Joint Applicants will implement a reasonable alternative;
- (8) in the event Joint Applicants fail to implement the 122 OSS performance measurements, standards/benchmarks and remedies from the Texas collaborative process, or if not technically feasible a reasonable alternative within the 345 day period, Joint Applicants shall pay a fine to CLECs and to the newly established Community Technology Fund in an amount to be determined by this Commission, but in no event shall such fine amount be less than \$30 million;
- (9) Joint Applicants’ OSS system shall be subject to independent, third party testing;

- (10) this Commission shall initiate a proceeding for a duration of at least 5 years that shall govern Joint Applicants' compliance with the requirements of this Order and under which the Commission may levy appropriate penalties for the Joint Applicants' failure to comply with the requirements of this Order and under which independent, third party testing of Joint Applicants' OSS system shall be conducted.

IT IS THEREFORE ORDERED,

IT IS FURTHER ORDERED that any materials submitted in this proceeding for which proprietary treatment was requested shall be accorded such treatment.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this     day of     , 1999.

Chairman

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company	)	
d/b/a Ameritech Illinois, and	)	
Ameritech Illinois Metro, Inc.	)	
	)	98-0555
Joint Application for approval of the	)	
reorganization of Illinois Bell Telephone	)	
Company d/b/a, Ameritech Illinois, and the	)	
reorganization of Ameritech Illinois Metro, Inc.	)	
in accordance with Section 7-204 of the Public	)	
Utilities Act and for all other appropriate relief.	)	

**NOTICE OF FILING**

Please take notice that on July 27, 1999, NEXTLINK Illinois, Inc. sent by overnight mail, postage prepaid, an original and twelve copies of its Brief on Re-Opening to the Chief Clerk of the Illinois Commerce Commission, Donna Caton, 527 E. Capitol, P.O. Box 19280, Springfield, Illinois 62794-9280.

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Michelle Cass

**CERTIFICATE OF SERVICE**

I, Michelle Cass, certify that on July 27, 1999, I served a copy of the foregoing document, together with a Notice of Filing, upon the Hearing Examiners by overnight mail, postage prepaid, and upon all parties of record by United States mail, postage prepaid, Oak Brook, Illinois.

\_\_\_\_\_  
Michelle Cass

Michelle Cass  
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